

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

City of Dallas,

Plaintiff,

v.

Triple D Gear, LLC,

Defendant.

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CIVIL ACTION NO. 3:23-cv-2367-K

**APPENDIX IN SUPPORT OF CITY OF DALLAS' RESPONSE IN
OPPOSITION TO DEFENDANT'S MOTION TO AMEND SCHEDULING ORDER**

<u>DESCRIPTION</u>	<u>PAGE NUMBER</u>
Declaration of Megan O'Laughlin	APP. 001
Exhibit A to O'Laughlin's Declaration	APP. 004

DATED: July 17, 2024

Respectfully submitted,

/s/ Megan M. O'Laughlin

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COUNSEL FOR PLAINTIFF
CITY OF DALLAS

CERTIFICATE OF SERVICE

On July 17, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Megan M. O'Laughlin
Megan M. O'Laughlin

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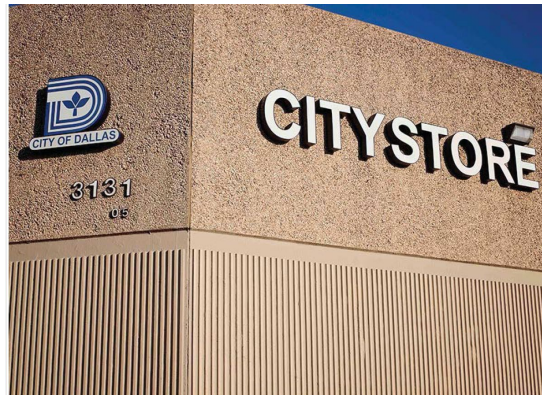
**DECLARATION OF MEGAN O’LAUGHLIN IN SUPPORT
OF IN SUPPORT OF CITY OF DALLAS’ RESPONSE IN
OPPOSITION TO DEFENDANT’S MOTION TO AMEND SCHEDULING ORDER**

Pursuant to 28 U.S.C. § 1746, I, Megan O’Laughlin, declare that:

1. I am over 18 years of age and am legally competent to testify on the matters contained in this declaration. I am counsel of record for City of Dallas (the “City”) in this matter. All factual matters to which I testify herein are within my personal knowledge.

2. On February 2, 2024, I personally served the City’s Initial Disclosures and produced documents bearing the bates-labels CITY 000001-000848 to counsel of record (on that date) for Defendant.

3. Among these documents produced on February 2, 2024 was the following picture:



This picture was bates-labeled CITY 00059 in the bottom left corner of the document.

4. A true and correct copy of the document bearing the bates-label CITY 00059 that I produced to Defendant's then-counsel on February 2, 2024 is attached to the Declaration as Exhibit A.

5. To date, Defendant has served no written discovery on the City and has taken no depositions in this action. In contrast, the City served its First Set of Discovery Requests on March 8, 2024 (which included Interrogatories, Requests for Admission, and Requests for Production of Documents). The City has also taken the corporate representative deposition of Defendant.

6. If Defendant's Motion to Amend the Scheduling Order is granted, and the Court later allows Defendant to file counterclaims against the City, the City would have to take a second corporate representative deposition of Defendant.

7. I was also counsel of record for the City in the TTAB Cancellation Proceeding styled *City of Dallas v. Triple D Gear, LLC*, Cancellation Proceeding No. 92077406 (2021).

8. In response to Defendant's Interrogatories that it served in the TTAB Cancellation Proceeding, the City disclosed to Defendant the existence of the City's retail store:

INTERROGATORY NO. 14:

State where, how or when a consumer in the general public may purchase or will be able to purchase "clothing, namely, shirts, sweaters, pants, shorts, socks, pajamas, scarves and gloves; headwear, namely, hats, caps and visors" bearing the City Logo.

ANSWER:

Petitioner objects to this Interrogatory as overbroad and not proportional to the needs of the case in failing to limit the request to a specific time frame as required. Petitioner further objects to this Interrogatory to the extent that it implies that a cash sale is required to establish use in commerce of a trademark, as "commerce" is defined in the Lanham Act.

Subject to and without waiving the foregoing objections, Petitioner answers: a member of the general public has been able purchase apparel items bearing the City Logo at 1500 Marilla Street, Dallas, Texas 75202 and at 3131 Irving Boulevard, Suite 600, Dallas, Texas 75247; however, the City Store remains temporarily closed due to ongoing public health concerns regarding the COVID-19 pandemic.

9. The City's verified response to the foregoing Interrogatory No. 14 was served on Defendant's counsel of record in that TTAB Cancellation Proceeding on March 2, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 17, 2024,

/s/ Megan M. O'Laughlin
Megan M. O'Laughlin

EXHIBIT A



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CITYSTORE

APP. 005